



**MINUTES  
TOWN OF NAGS HEAD  
BOARD OF COMMISSIONERS  
REGULAR MEETING  
WEDNESDAY, MAY 3, 2023**

The Nags Head Board of Commissioners met in person at the Board Room located at 5401 S Croatan Highway, Nags Head, North Carolina on Wednesday, May 3, 2023 at 9:00 a.m. for a Regular Meeting.

Board members Present: Mayor Ben Cahoon; Mayor Pro Tem Michael Siers; Comr. Renée Cahoon; Comr. Kevin Brinkley; and Comr. Bob Sanders

Board members Absent: None

Others present: Town Manager Andy Garman; Attorney John Leidy; Kelly Wyatt; Kate Jones; Amy Miller; David Ryan; Perry Hale; Randy Wells; Michelle Gray; Roberta Thuman; Lauren Bailey; Andy Shaffer; Aubrey Everette; Jason Berry; Andy Harrell; Ben Saltzman; Basil Belsches; Shelly Gladstone; Susan Kaplan; Jeff Padlak; Rick Arthur; Debbie McConnell; John Harris; Nathaniel Stevenson; Mike Morway; Stan White; and Town Clerk Carolyn F. Morris

**CALL TO ORDER**

Mayor Cahoon called the meeting to order at 9 am. A moment of silent meditation was followed by the Pledge of Allegiance.

**ADOPTION OF AGENDA**

MOTION: Comr. Brinkley made a motion to approve the May 3<sup>rd</sup> agenda as presented. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

**RECOGNITION**

NEW EMPLOYEES

Police Chief Perry Hale introduced Police Office Assistant Lauren Bailey who was welcomed by the Board to Town employment.

Public Services Director Nancy Carawan introduced the following new employees who were welcomed by the Board to Town employment:

- Facilities Maintenance Technician Andy Shaffer
- Facilities Maintenance Technician Aubrey Everette
- Sanitation Equipment Operator Jason Berry
- Sanitation Equipment Operator Andy Harrell

PROCLAMATION - Police Officer's Week - May 15 – 21, 2023

Police Chief Perry Hale summarized this year's Police Officer's Week and spoke of the memory of Sgt. Earl Murray who died in the line of duty on May 15, 2009. Mayor Cahoon read the proclamation as follows:

'WHEREAS, The Congress and President of the United States have designated May 15<sup>th</sup> as Peace Officers' Memorial Day, and the week in which May 15<sup>th</sup> falls as National Police Week; AND

'WHEREAS, The members of the Nags Head Police Department play an essential role in safeguarding the rights and freedoms of the residents and visitors of the Town of Nags Head; AND

'WHEREAS, It is important that all citizens know and understand the duties, responsibilities, hazards, and sacrifices of their law enforcement agency, and that members of our law enforcement agency recognize their duty to serve the people by safeguarding life and property, by protecting them against violence and disorder, and by protecting the innocent against deception and the weak against oppression; AND

'WHEREAS, The men and women of the Nags Head Police Department unceasingly provide a vital public service; AND

'WHEREAS, Let each of us take the time to reflect on the ultimate sacrifice Sgt. Earl Murray, Jr. made for the Town of Nags Head on May 15, 2009 and the rest of the officers that have done so nationwide. And let each of us keep their family, friends, and all fellow officers in our thoughts and prayers.

'NOW, THEREFORE, the Nags Head Board of Commissioners calls upon all citizens of the Town of Nags Head and upon all patriotic, civic, and educational organizations to observe the week of May 15 - 21, 2023 as Police Week with appropriate ceremonies and observances in which all our people may join in commemorating law enforcement officers, past and present, who, by their faithful and loyal devotion to their responsibilities, have rendered a dedicated service to their community and, in so doing, have established for themselves an enviable and enduring reputation for preserving the rights and security of all citizens.

'THEREFORE, we do hereby proclaim the week of May 15 - 21, 2023, as Police Week and call upon all citizens of Nags Head to observe the 15<sup>th</sup> day of May 2023, as Peace Officers' Memorial Day in honor of those law enforcement officers who, through their courageous deeds, have made the ultimate sacrifice in service to their community or have become disabled in the performance of duty, and let us recognize and pay respect to the survivors of our fallen heroes."

MOTION: Comr. Brinkley made a motion to adopt the Police Officer's Week Proclamation as presented. The motion was seconded by Comr. Renée Cahoon which passed unanimously.

PRESENTATION – Outer Banks Bicycle and Pedestrian Safety Coalition

Outer Banks Bicycle and Pedestrian Safety Coalition Marketing Director and Chair Ben Saltzman summarized his powerpoint presentation which is attached to and made a part of these minutes as shown in Addendum "A". Mr. Saltzman stated that the coalition is looking for additional participation and to get the word concerning safety out to everyone.

Comr. Renée Cahoon urged everyone to get involved if possible; Board members thanked Mr. Saltzman for his presentation.

## **PUBLIC COMMENT**

No one spoke during Public Comment.

## **CONSENT AGENDA**

The Consent Agenda consisted of the following items:

- Consideration of Budget Amendment #14 to FY 22/23 Budget
- Consideration of Tax Adjustment Report
- Approval of minutes
- Consideration of Resolution of approval for Water Shortage Response Plan
- Request approval of Moffatt and Nichol proposal to perform annual summer Beach Monitoring and Analysis report
- Request for Public Hearing to consider citizen comment on the Town Manager's proposed operating budget for July 1, 2023 – June 30, 2024, proposed CIP requests for FY 23/24 through FY 27/28, and updated Consolidated Fee Schedule
- Request for Public Hearing to consider text amendments to Unified Development Ordinance as it pertains to the supplemental regulations associated with "Fueling Stations" within the Town

**MOTION:** Comr. Brinkley made a motion to approve the Consent Agenda as presented. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

Budget Amendment #14, as approved, is attached to and made a part of these minutes as shown in Addendum "B".

The Tax Adjustment Report, as approved, is attached to and made a part of these minutes as shown in Addendum "C".

The Water Shortage Response Plan summary sheet read in part as follows:

"At the May 3<sup>rd</sup> Board of Commissioners meeting, it is requested that the Board review/approve the attached Water Shortage Response Plan by adopting the attached resolution. The Water Shortage Response Plan, prepared by Water Superintendent David Perry, details water conservation measures to respond to drought or other water shortage conditions.

'A Water Shortage Response Plan is a requirement for all systems that submit a Local Water Supply Plan. A Water Shortage Response Plan establishes authority for declaration of a water shortage, defines different phases of water shortage severity, and outlines appropriate responses for each phase.

'The plan must be updated every five years and was last updated in 2018. The only change to the plan from five years ago are name changes for the responsible parties, contacts, and the TV channel we use for notification to the public. A copy of the resolution will be sent to the Dept. of Water Resources state engineer.

'The Plan is required by NC General Statute 143-355.2(a) and 15A NCAC 02E.0607.

'In addition to the proposed Plan and Resolution, the letter from NC Division of Environmental Quality dated March 1, 2023, is also attached."

The resolution of approval for the Water Shortage Response Plan, as adopted, read in part as follows:

"WHEREAS, North Carolina General Statute 143-355 (1) requires that each unit of local government that provides public water service and each large community water system shall develop and implement water

conservation measures to respond to drought or other water shortage conditions as set out in a Water Shortage Response Plan and submitted to the Department of Environment and Natural Resources, Division of Water Resources, for review and approval; AND

'WHEREAS, as required by the statute and in the interests of sound local planning, a Water Shortage Response Plan for the Town of Nags Head, has been developed and submitted to the Board of Commissioners for approval; AND

'WHEREAS, the Board of Commissioners finds that the Water Shortage Response Plan is in accordance with the provisions of North Carolina General Statute 143-355 (1) and that it will provide appropriate guidance for the future management of water supplies for the Town of Nags Head, as well as useful information to the Department of Environment and Natural Resources for the development of a state water supply plan as required by statute.

'NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Town of Nags Head that the Water Shortage Response Plan, dated April 2023, and provided in Chapter 44 Utilities, Division 7 Conservation, of the Town Code of Ordinances, is hereby approved and shall be submitted to the Department of Environment and Natural Resources, Division of Water Resources; AND

'BE IT FURTHER RESOLVED that the Board of Commissioners intends that this plan shall be revised to reflect changes in relevant data and projections at least once every five years or as otherwise requested by the Department, in accordance with the statute and sound planning practice."

The Moffatt and Nichol proposal, as approved, read in part as follows:

"Annually, the Town subcontracts surveying and engineering services to perform an annual beach condition survey and engineering data analysis in accordance with the Town's Beach Monitoring & Maintenance Plan. The survey scope of work includes the base project data acquisition of 126 profiles in conjunction with additional transect information data acquisition north of the project area, south of the project area and within reaches 3 and 4. The additional data acquisition was authorized to be added to the work plan in June 2020.

'A fee proposal in the amount of \$66,250 has been submitted by McKim & Creed to complete the base bid work in addition to options 1,2, and 3. The fees remain unchanged from FY 22/23. Field data acquired by McKim & Creed will be provided to the coastal engineer, Moffat & Nichol, and will be analyzed to review annual shoreline changes, annual volume changes, project performance, background erosion rates, dune behavior and evaluation of long-term trends. This information will be synthesized into a report format and submitted to the Town by mid-September.

'A fee proposal, Task 13.1, in the amount of \$57,119 for the monitoring and analysis has been submitted by Moffat & Nichol to analyze the annual survey data and report preparation. The fee for task 13.1 remains unchanged from FY 22/23. Optional Tasks 13.2 and 13.3 have been included in the fee proposal and will only be authorized by the Town in the case of a federally declared storm event.

'Staff recommends acceptance of the total scope of work presented in the McKim & Creed fee proposal and acceptance of Task Order 13.1 of the Moffat & Nichol Proposal. If the Board of Commissioners is in agreement with the staff recommendation, a motion will be in order to authorize the Town Manager to execute McKim & Creed, Town of Nags Head Beach Monitoring Surveys, Summer 2023 and the Moffat & Nichol Town of Nags Head 2023 Beach Monitoring and Analysis, Task 13.1."

The Request for Public Hearing for the annual proposed operating budget, as approved, read in part as follows:

"Request that a Public Hearing be scheduled for the June 7, 2023 Board of Commissioners meeting to consider citizen comment on the following:

- Town Manager's proposed operating budget for fiscal year July 1, 2023 – June 30, 2024,
- Proposed Capital Improvement Program (CIP) requests for FY 23/24 through FY 27/28, and
- Updated Consolidated Fee Schedule"

The Request for Public Hearing re: fueling stations, as approved, read in part as follows:

"As part of the amendments to the UDO related to the Historic Character Area, the Board of Commissioners adopted revisions to Section 7.20, Supplemental Regulations for Fueling Stations within the C-5, Historic Character Commercial Zoning District. These amendments limit fueling stations to no more than four (4) fueling dispensers, preclude any new development of a fueling station on a lot that has frontage on NC 12, and, if a convenience store is associated with a fueling station, limit the building to 3,500 square feet of habitable area. At their March 15, 2023 meeting, the Board of Commissioners expressed an interest in extending these fueling station regulations town wide.

'Staff and Planning Board Recommendation

Staff submits that the proposed text amendment would ensure that only fueling stations of a specific size, scale, and character could be constructed within the town, noting that fueling stations with larger convenience stores and numerous fueling dispensers do not meet the values and the desired aesthetic of the Town of Nags as outlined in the Comprehensive Land Use Plan.

'At their April 18, 2023 meeting the Planning Board voted unanimously to recommend adoption of the text amendment as proposed."

## **PUBLIC HEARINGS**

Public Hearing to consider Official Zoning Map amendment re: new zoning district – the C-5 Historic Character Commercial Zoning District

Attorney John Leidy introduced the Public Hearing to consider the Official Zoning Map amendment re: the new zoning district – the C-5 Historic Character Commercial Zoning District - at 9:18 a.m.

Notice of the Public Hearing was published in the *Coastland Times* on Wednesday, April 19, 2023 and on Wednesday, April 26, 2023 as required by law.

Planning Director Kelly Wyatt summarized her memo which read in part as follows:

"At their March 1, 2023 meeting, after having heard the presentation from planning staff and receiving valuable public comment from numerous property owners, the Board of Commissioners tabled action on the proposed Historic Character Area amendments and requested that planning staff return at their March 15<sup>th</sup> mid-month meeting with the requested text amendment updates incorporated into ordinance form. The Board of Commissioners also delayed acting on the proposed map amendments at this time. They requested that the proposed map amendments be recirculated to the Planning Board for additional review of the zoning designations and district boundaries to include consideration of redesignating the property at 100 E. Hollowell Avenue from the proposed R-3, Medium Density Zoning District to the C-5, Historic Character Commercial District.

'Planning staff did present the requested revisions to the proposed text amendments to the Board of Commissioners at their March 15<sup>th</sup> mid-month meeting. These amendments were adopted and are included as an attachment for your review (Attachment C). This will be helpful in consideration of the zoning designations and district boundaries in light of the types and intensity of uses approved in both the R-3, Medium Density Zoning District and the C-5, Historic Character Commercial Zoning District.

'Included for the Board of Commissioners consideration at their May 3, 2023 meeting is the proposed map amendment associated with the Historic Character Area and the recently adopted C-5, Historic Character Commercial Zoning District. The proposed zoning map amendment is unchanged from what was presented at the Board of Commissioners March 1st, 2023 meeting with one exception, the property at 100 E. Hollowell Street has been redesignated from R-3, High Density Residential District to C-5, Historic Character Commercial Zoning District (Attachment A). A draft of the townwide zoning map has also been included reflecting this proposed revision (Attachment B).

'Staff has received several email communications from property owners east of 100 E. Hollowell Street, fronting on NC 12, requesting that if the Planning Board and Board of Commissioners are inclined to redesignate the Hollowell parcel fronting US 158 to C-5, to give consideration to leaving their properties within the proposed R-3, High Density Residential Zoning District as it creates a level of consistency with how the properties have been developed and would ensure that should 100 E. Hollowell Street be developed commercially, that a minimum 10 foot wide landscape buffer with two rows of plantings would be required.

'Staff has also been in communication with the property owners of 4008 S. Virginia Dare Trail (Winkler, Hope) and they have requested that the Board of Commissioners consider redesignating their property from the R-3 District to the C-5 District as they do have an interest in revitalizing the Beachcomber Museum and believe the C-5, Historic Character Commercial District is best suited for their property.

#### 'Planning Board Recommendation

At their March 21<sup>st</sup>, 2023 meeting, the Planning Board voted unanimously to recommend adoption of the proposed map amendments as presented. The Planning Board made this recommendation for adoption noting their desire to ensure consistency in their recommendations of zoning designations and given that the public hearing process would require re-notification to property owners of all the affected properties as well as the adjoining properties, this would provide affected citizens an opportunity to express any comments or concerns with the recommended proposal.

'Staff notified the Planning Board at their April 18, 2023 meeting that the property owners of 4008 S. Virginia Dare Trail had expressed a desire to be redesignated from the R-3 District to the C-5 District. No concerns or objections were voiced to this request should the Board of Commissioners be inclined to consider it."

Ms. Wyatt stated that staff has been contacted by several residents re: extending the C-5 District to the Beachcomber Museum located at 4008 S Virginia Dare Trail; the Planning Board had no objections to this extension if the Board of Commissioners is interested.

Basil Belsches, property owner on S Memorial Ave; he and his neighbors in Old Nags Head Place encourage adoption as presented of the zoning map amendment; they feel it will help ensure the feel and nature of the area as described in the Comprehensive Plan; they also thanked staff for all their work on this item.

Shelly Blackstone, her property backs up to the proposed new zoning area; the process to change the zoning was refreshing – she emphasized that the area behind the residential area that backs up to the 4.7 acre lot is on an incline with a lot of flooding; a buffer between these two areas would be appreciated.

Susan Kalan, her and her husband Charles are property owners on E Hollowell St; change is inevitable but they did not want to see any change to the character of the area; she is in support of the zoning map amendment as presented; she thanked the Board and the Planning Board for listening to those with a permanent interest.

Jeff Pavlak, he and his wife Pat are owners on S Virginia Dare Trail in the new C-5 District; he is in support of the zoning map amendment as presented; he also spoke in favor of the process and the professionalism of everyone involved.

Debbie McConnell, her and her husband are property owners in support of the zoning map amendment as presented as she feels it provides the best compromise for everyone and will preserve the area they live in.

John Harris, President of Kitty Hawk Kites, he asked that section UDO Sec. 9 8.3.2.1.3 be reviewed for 4200 square feet along Hwy 12 to be the same as US 158 of 1200 square feet. He would also like to see Accessory Dwelling Units added to the C-5 district to help with year-round housing which is in keeping with the historic Nags Head area; he would also like to see extending the C-5 District to other historic areas in the Town.

Rick Arthur, Memorial Ave resident – he and his wife Barbara support the zoning map amendment and were impressed by the process.

Attorney Leidy confirmed that there was no one else present who wished to speak and that the Board had no further questions, and he closed the Public Hearing at 9:40 a.m.

MOTION: Comr. Renée Cahoon made a motion to adopt the zoning map amendment with one change – to include the Nags Head Beachcomber Museum, located at 4008 S Virginia Dare Trail, in the new C-5 District. The motion was seconded by Comr. Brinkley.

Board members thanked staff for all the work put into this project and thanked property owners and residents who participated and provided comments; they agreed that a healthy process was followed.

CONTINUATION OF MOTION: The motion passed unanimously.

The ordinance amending the zoning map, as adopted, is attached to and made a part of these minutes as shown in Addendum "D".

Public Hearing to consider a Vested Right/Special Use/Site Plan Amendment submitted by Albemarle & Associates, Ltd. on behalf of Nags Head Church for the expansion of its parking lot. The property is zoned R-2, Medium Density Residential and is located at 105 W. Soundside Rd

Attorney John Leidy introduced the Public Hearing to consider a Vested Right/Special Use/Site Plan amendment for the expansion of the parking lot at Nags Head Church. He explained that the Board sits as a quasi-judicial body and must make its decision: 1) based on competent material and substantial evidence - and those presenting must be sworn in 2) based on information presented, and 3) Board members must be recused if there is basis for believing that they would not be able to be an impartial decision maker - to include a commissioner having a fixed opinion not susceptible to change. He verified that Board members had no potential conflict and nothing to disclose at this time. The time was 9:50 a.m.

Sworn in by Town Clerk Carolyn F. Morris were Planning Director Kelly Wyatt, Albemarle & Associates Mike Morway and Nags Head Church Pastor Nathaniel Stevenson.

Notice of the Public Hearing was published in the *Coastland Times* on Wednesday, April 19, 2023 and on Wednesday, April 26, 2023, as required by law.

Planning Director Kelly Wyatt summarized her report which read in part as follows:

#### "GENERAL INFORMATION

'Applicant: Albemarle & Associates, Ltd. on behalf of Nags Head Church, Inc.

Application Type: Vested Right/Special Use Permit/Site Plan Review.

Purpose/Request: Expansion of Nags Head Church Parking Lot.

Property Location: 105 West Soundside Road, Nags Head.

Existing Land Use: Religious Complex.

Zoning Classification of Property: R-2, Medium Density Residential Zoning District.

'Zoning Classification of Surrounding Properties: Property to the north directly across Soundside Road is zoned SPD-20, Special Planned Development-20 and is developed residentially. Property to the south is zoned R-2, Medium Density Residential and is developed residentially (Coastal Villas and Southridge Subdivision). Property to the west is zoned R-2, Medium Density Residential and developed residentially. Property to the east, directly across US Hwy 158 is zoned C-2, General Commercial and developed commercially (Mulligans Restaurant).

'Flood Hazard Zone of Property: Portions of this property are located within a Shaded X Flood Zone. Per the Town of Nags Head local ordinance, the property is subject to an RFPE/LES of 9 ft. The proposed first floor of the relocated storage shed will be required to be elevated above the 9-foot RFPE.

'Land Use Plan Map/Policies: The 2017 Comprehensive Plan Future Land Use Map classifies this property as Residential and is within the Historic Character Area. This proposal is consistent with this land use classification and stated Land Use Policies, noting that preservation of natural vegetation, topography and maintaining open space and view sheds are key elements of preserving the Historic Character Area.

#### 'SPECIFIC INFORMATION

Applicable Zoning Regulations:

- Use Regulations: Section 6.6, Table of Uses and Activities lists "Religious Complex" as a Special Use within the R-2, Medium Density Residential District, with supplemental regulations set forth in Section 7.45. Section 4.5, Applications Reviewed by the Planning Board and Board of Commissioners, states that Board of Commissioners approval upon Planning Board review and recommendation applies to Major Site Plan requests. A Major Site Plan is any scope of work beyond what can be approved administratively as a Minor Site Plan, noted in Section 4.4 of the Unified Development Ordinance. The scope of work associated with this request requires it to be considered as a Major Site Plan review.
- Lot Coverage: Total allowable lot coverage for this site is 30% but may be increased to 45% with stormwater management facilities designed to retain and infiltrate the two-inch storm event. Proposed lot coverage is 22.8% and is therefore compliant.
- Height and Architectural Design: The proposed request for expansion of the parking lot and relocation of the storage shed does not necessitate any revisions to these elements.
- Parking: Pursuant to Article 10, Table 10-2, Required Parking by Use, Religious Complex shall provide one parking space for each 4 seats in the sanctuary. 97 parking spaces are required for this use and 97 parking spaces currently exist. There is no proposed expansion of seating in the sanctuary requiring this



parking expansion. The applicant has noted in the application narrative that while the existing parking lot meets the minimum town zoning requirements, they have found there is a need to expand their parking capacity due to an overlap in parishioners in the facility between masses.

'Section 10.92.14.4 of the UDO, Surface Materials, requires a minimum of twenty (20) percent of the surface area of the parking area and drive aisles to be constructed of permeable surface material. The parking lot expansion is resulting in an additional 21,880 square feet of coverage. Of that area, 23.4% is proposed to be in a permeable surface material.

- Buffering/Landscaping: Several sections of the Unified Development Ordinance speak to Buffering and Landscaping as it applies throughout this proposed site:

- Section 10.92.6.2 of the UDO, Parking and Drive Aisle Setbacks, requires that where off-street parking is provided between the building and the street right-of-way line, a parking lot buffer of at least ten (10) feet in width shall be provided between the parking lot and the street right-of-way. A compliant 10-foot-wide buffer has been shown between proposed new parking area in the northwest corner, adjacent to Soundside Road.

- Section 10.93.3.2 of the UDO, Commercial Transitional Protective Yards, requires increased landscaping to be provided and maintained when non-residential land uses are adjacent to a residential use or residential zoning district. This protective landscape buffer is required to be ten (10) feet in width with two rows of acceptable plant material. The property to the west is developed residentially as well as properties to the north and south alongside the area containing the paved access to the stormwater infiltration basin and the relocated shed. These areas shall either plant new or preserve existing mature vegetation consistent with the requirements for the commercial transitional protective yard. A note stating such has been shown on the proposed landscape plan.

- Section 10.93.3.7 of the UDO, Interior Parking Lot Landscaping, requires parking lot landscaping be provided at a minimum rate equal to ten percent of the total area of the parking spaces. The minimum area necessary for compliance is 2,611 square feet of vegetation, they are proposing 2,961 square feet of vegetation, approximately 11.3%, therefore interior parking lot landscaping is compliant.

- Section 10.93.3.8 of the UDO, Vegetation Preservation/Planting Requirements, requires that new development projects either preserve a minimum of ten (10) percent of the lot's total area with existing natural vegetation and/or dune elevations or plant new vegetation in lieu of preservation. When existing vegetation cannot be preserved, the planting of a minimum of fifteen (15) percent of the lot's total area shall be required. Over 48% of the total lot area will remain undisturbed and all existing, mature vegetation will remain onsite.

- Lighting: The proposed lighting plan has been reviewed and found to be in compliance with the requirements of Article 10, Part IV of the Unified Development Ordinance. In addition, a light audit will be required prior to issuance of occupancy permits.

- Signage: No additional signage is being proposed at this time.

'Water and Sewage Disposal: The Dare County Health Department has reviewed and approved the proposal as presented (DCHD Approval Attached).

'Traffic Circulation: Traffic circulation has been reviewed and approved by the Town Engineer as proposed.

'Stormwater Management: Stormwater management has been reviewed and approved by the Town Engineer as presented.

'Fire: The project will be required to comply with all applicable NC Fire Prevention Code requirements as part of building permit application review and issuance.

'Public Works: The Public Works Director has reviewed and approved the proposed site plan as presented.

#### 'ANALYSIS

Staff finds that the proposal is consistent with the applicable use and development standards, as well as relevant land use policies.

#### 'STAFF RECOMMENDATION

Based upon Staff's review of the proposal, staff recommends approval of the Vested Right/Special Use Permit/Major Site Plan Review as presented. Staff would note that efforts should be made to preserve as much existing, mature vegetation as possible, especially Live Oaks, the Town Tree.

#### 'PLANNING BOARD RECOMMENDATION

At their March 21, 2023 meeting, the Planning Board voted unanimously to recommend approval of the Vested Right/Special Use/Major Site Plan Amendment as presented.

'Pursuant to Section 3.8.4.6 of the Unified Development Ordinance the Board of Commissioners shall issue a Special Use Permit if it has evaluated an application through a quasi-judicial process and determined that:

1. The use will not materially endanger the public health and safety if located where proposed and developed according to the plan as submitted.
2. The use, as proposed, will not overburden the firefighting capabilities and the municipal water supply capacity of the Town as such facilities and capabilities will exist on the completion date of the conditional use for which application is made.
3. The conditional use will be in harmony with the existing development and uses within the area in which it is to be located.
4. Adequate utilities, access roads, drainage, parking, or necessary facilities have been or are being provided.
5. Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets."

Comr. Renée Cahoon confirmed with Ms. Wyatt that there are no new light fixtures being proposed along the western boundary and no concerns re: lighting due to the new parking area between two residential lots.

Comr. Sanders questioned how much vegetation would be lost; Ms. Wyatt stated that there is a significant amount of vegetation, including oak trees, in the area. She said that the applicant has indicated they would make all efforts to keep as much vegetation as possible; there will be a significant amount of clearing.

Mayor Cahoon confirmed that clearing is being done for the stormwater drainage access for the new parking.

Mike Morway, Albemarle & Associates, he appreciates the opportunity to work on this project; the main issue is that there are not enough parking spaces; there has been parking in the infiltration basin and on the street which is no longer allowed.

Mayor Cahoon confirmed with Mr. Morway that the purpose of the "road" is to construct and maintain the stormwater basin; it would be presented as a lawn area – to also allow space for youth events, etc.

Comr. Renée Cahoon asked Mr. Morway if you could use the basin to back out without clearing all the rest of the property. Mr. Morway stated it would be cleared anyway for recreational purposes – there was no talk of developing the area just as a use for stormwater drainage.

Mayor Pro Tem Siers questioned if a 30" pipe is adequate for that subdivision for the drainage and if runoff to the neighboring subdivision was considered. Mr. Morway stated that the upstream/downstream pipes were not considered as issues.

Nags Head Church Pastor Nathaniel Stevenson said that parking on Sunday mornings is down Soundside Road which is the reason why this action is being requested. The space would mostly just be used for walking – possibly a path at some point – other agencies use the church throughout the week.

There being no one else present who wish to speak, Attorney Leidy closed the Public Hearing at 10:33 a.m.

Comr. Sanders expressed concern with the live oaks being cut down – he feels too much vegetation is being lost.

Comr. Brinkley agreed with Comr. Sanders but feels a walking path could be useful and encouraged working with staff to leave as much vegetation as possible.

Comr. Renée Cahoon expressed concern about the amount of grading to be done, she feels it can be done without all the vegetation being removed.

Mayor Pro Tem Siers said that he does not have an issue with the plan as presented.

Board members emphasized that they would like to see as much of the vegetation in the area remain as possible. They feel that this is a good opportunity for staff to work with the contractor to move around the area as needed, keeping some of the vegetation, and accomplishing the same goal.

**MOTION:** Comr. Brinkley made a motion to approve the Vested Right/Special Use/Site Plan amendment for Nags Head Church for expansion of their parking lot as presented and making the five findings of fact as listed in the staff report as follows:

- The use will not materially endanger the public health and safety if located where proposed and developed according to the plan as submitted.
- The use, as proposed, will not overburden the firefighting capabilities and the municipal water supply capacity of the Town as such facilities and capabilities will exist on the completion date of the conditional use for which application is made.
- The conditional use will be in harmony with the existing development and uses within the area in which it is to be located.
- Adequate utilities, access roads, drainage, parking, or necessary facilities have been or are being provided.
- Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.

The motion was seconded by Comr. Sanders which passed unanimously.

Public Hearing to consider text amendments to the Unified Development Ordinance as it pertains to the Town's short-term rental registration rules

Attorney John Leidy introduced the Public Hearing to consider text amendments to the Unified Development Ordinance (UDO) as it pertains to the Town's short-term rental registration rules. The time was 10:43 a.m.

Notice of the Public Hearing was published in the *Coastland Times* on Wednesday, April 19, 2023 and on Wednesday, April 26, 2023, as required by law.

Planning Director Kelly Wyatt summarized her memo which read in part as follows:

"In April 2019 the Board of Commissioners adopted amendments to the Town Code and Zoning Ordinance (now the Unified Development Ordinance) defining short term rentals (STR's) and establishing regulatory requirements for short term rentals within the Town (ordinance attached). The goal of adopting of this short term rental registration program was to understand the location of STR's within the Town, to establish a point of contact with the operator to ensure they can be contacted in case of an emergency, to provide information regarding specific insurance and tax obligations of those conducting rental activities within single-family dwellings and to inform operators of the safety requirements and other relevant provisions of the North Carolina Vacation Rental Act. To date this has been a voluntary registration program.

'The North Carolina Court of Appeals ruled in *Schroeder v. City of Wilmington* that state law prohibits a registration requirement for short-term rentals, but the court also ruled that state law allows for general zoning and development standards for short-term rentals. The UNC School of Government has written an informative blog about this ruling and what it means specific to local ordinances. This document can be accessed [HERE](#).

'At this time, staff is proposing to rescind the town's current Short-Term Rental (STR) Registration program while we continue to explore mechanisms to regulate STR's within the Town so that we may still achieve the original stated goals.

'Attached is an ordinance amendment proposing to eliminate language within the Town Code and the Unified Development Ordinance related to the registration requirements for short-term rentals within the town.

'Planning Board Recommendation

At their March 21st meeting the Planning Board voted unanimously to both initiate and recommend adoption of the proposed ordinance amendments needed to rescind the town's current Short-Term Rental Registration program. The Planning Board was also supportive of exploring other mechanisms to regulate STR's within the Town.

'If the Board of Commissioners is inclined to adopt this proposed text amendment, please reference Appendix A for the Statement of Consistency with the Town's adopted Comprehensive Land Use Plan requirements (attached)."

There being no one present who wished to speak Attorney Leidy closed the Public Hearing at 10:46 a.m.

MOTION: Mayor Pro Tem Siers made a motion to adopt the ordinance re: removal of short-term rental registration rules as presented. The motion was seconded by Comr. Brinkley.

Mayor Pro Tem Siers expressed his concern, as a realtor, that some short-term rental properties will be managed by those without a lot of knowledge/experience in this field – other Board members agreed.

CONTINUATION OF MOTION: The motion passed unanimously.

The ordinance, as adopted, is attached to and made a part of these minutes as shown in Addendum "E".

## **REPORTS AND RECOMMENDATIONS FROM THE PLANNING BOARD AND THE PLANNING AND DEVELOPMENT DIRECTOR**

### Update from Planning Director

Planning Director Kelly Wyatt summarized her report which read in part as follows:

"This memo provides an overview of selected Planning and Development Department activities, projects, and initiatives. If requested, Staff will be prepared to discuss any of this information in detail at the Board of Commissioners meeting on May 3<sup>rd</sup>, 2023.

#### Monthly Activity Report

Attached for the Board's review is the *Planning and Development Monthly Report for March 2023*. In addition to permitting, inspections, code enforcement, and Todd D. Krafft Septic Health Initiative activities, Staff was involved in the following meetings or activities of note during the month:

- Tuesday, April 4<sup>th</sup> – Technical Review Committee Meeting
- Wednesday, April 5<sup>th</sup> - Board of Commissioners Meeting
- Thursday, April 6<sup>th</sup> – CRS Users Group Meeting
- Tuesday, April 11<sup>th</sup> – Planning Department Staff Meeting
- Wednesday, April 12<sup>th</sup> – Committee for Art and Culture Meeting
- Thursday, April 13<sup>th</sup> – Board of Adjustment Meeting (no hearings scheduled)
- Tuesday, April 18<sup>th</sup> – Planning Board Meeting
- Tuesday, April 25<sup>th</sup> – Septic Health Advisory Committee Meeting
- Tuesday, April 25<sup>th</sup> – Planning Department Staff Meeting
- Thursday, April 27<sup>th</sup> – ETIPP Team Meeting

#### Planning Board - Pending Applications and Discussions

The Planning Board's most recent meeting was held on Tuesday, April 18<sup>th</sup>, 2023 and included the following: 1) consideration of a Major Site Plan Review/Site Plan Amendment for construction of additional parking at 4917 S. Croatan Highway, 2) consideration of text amendments to the UDO as it pertains to the supplemental regulations for "Fueling Stations" within the town, 3) discussion of text amendments to the UDO as it pertains to the definition of "Habitable Building Area", and 4) continued conversation on definition of dwelling unit, accessory structures and uses and review of the text amendments proposed in 2019 pertaining to allowance of accessory dwelling units (ADU's).

'As part of the discussion with the Planning Board on ADU's, staff noted that there is currently legislation regarding the regulations of ADU's that we will need to stay aware of as we continue discussions. As currently proposed this legislation would:

- Allow Accessory Dwelling Units of 1-2 BR units in any areas zoned for residential use.
- Prohibits local government parking minimums, owner occupancy, or conditional use zoning for ADUs.
- Prohibits local governments from not allowing ADUs to connect to main dwelling utilities and charging excess fees.
- Prohibits local governments from passing regulations to deter/discourage ADU development.
- Sets statewide minimum setback for ADUs at 10 feet or less if local zoning regulations allow. You can view HB409 here: <https://www.ncleg.gov/BillLookup/2023/hb409>

'The Planning Board's next meeting is scheduled for May 16<sup>th</sup>, 2023. At this time, the agenda is expected to include a Sketch Plan Review for development of a 2,460 sf Starbucks Drive-Thru Restaurant at 7100 S. Croatan Highway, consideration of a text amendment to allow Drive-Thru Restaurants within Group Developments, consideration of a text amendment related to the definition of "Habitable Building Area"; consideration of text amendments to Section 11.10 of the UDO as it relates to discharge of stormwater, pool water, hot tub water and dewatering effluent in areas with elevated ground water levels, and lastly, continued discussion on the definition of single-family dwellings, accessory structures and uses, and the use and regulation of ADU's.

#### 'Board of Adjustment – Pending Applications

There were no items for Board of Adjustment consideration in April 2023 and no items have been received for the May 2023 meeting.

#### 'Additional Updates

- DWMP/Septic Health Advisory Committee (SHAC) – The Septic Health Advisory Committee held their quarterly meeting on Tuesday, April 25<sup>th</sup>. East Carolina University interns, Taniya Johnson and Thomas Shelton were in attendance and presented to the committee several eye-catching designs for educational materials and an interactive mapping tool to display water quality testing results. Staff updated the committee on recent outreach materials that have been purchased such as reusable bags and pens for giveaways. Staff discussed changes in the water quality testing schedule, changes to sampling parameters, and updated the committee on the status of purchasing the water quality data loggers identified in the DWMP. After receiving an update on a recent de-watering event associated with the installation of an in-ground pool, and noting the concerns, it was the consensus of the committee to move forward the discussion necessary to initiate text amendments to Section 11.10 of the UDO as it pertains to de-watering methods in areas with elevated ground water levels. For the next meeting of the SHAC, members would like an update on the impact the mailers sent to South Nags Head and Old Nags Head Cove have made, as well as final numbers on inspections, pump outs, and loans for fiscal year 22-23. The SHAC will plan to provide the Board of Commissioners with an update at their August 2<sup>nd</sup>, 2023 meeting.
- Estuarine Shoreline Management Plan – Staff prepared and submitted the pre-application for the National Fish and Wildlife Foundation grant to fund surveys, design, and engineering of the three prioritized sites. If invited to submit a full application, the deadline is June 28<sup>th</sup>, 2023.
- NC Resilient Coastal Communities Program – Phase 3 of the NC RCCP is complete, and the town is requesting \$170,000 from the North Carolina Resilient Coastal Communities Program Phase 4 (Implementation) to supplement construction of stormwater project area #12. Funds will be used to install approximately 2,500 square feet of pervious pavement and vegetated swale and infiltration areas. These green nature-based improvements reduce the total runoff from the site. A portion of the funds will also be used to install a remote monitoring and operation system for the stormwater pumping system. This will increase the Town's ability to monitor groundwater and flood water elevations in the project area and more efficiently operate the system.
- Electric Vehicle Action Plan – No new updates to this item.

- ETIPP Project/Program – The ETIPP team ran the Re opt model one final time for the four prioritized town facilities, including a more detailed backup generator cost benefit analysis. The team is meeting on Thursday, April 27<sup>th</sup> to review the final modelling results and wrap up final tasks, which include identifying specific grants at the federal and state level that are appropriate to fund these systems.
- Whalebone Park: Phase 1 Planning – The town intends to move forward with a simple restroom design to be constructed on site with the grant allocation from the Outer Banks Visitors Bureau. Construction will likely take place this fall.
- Dune Management Cost Share Program – This program has allocated 100% of the available funding of \$320,000, with 99 applicants. Staff is currently processing reimbursements associated with approved completed projects.
- Sand Relocation Authorization Program – The last day to complete a sand relocation project within the Town is April 30<sup>th</sup>, 2023. As of April 26<sup>th</sup> we have written 189 authorizations.
- Permitting Update 3<sup>rd</sup> Quarter – See below for the total number of permits accepted and the average turnaround time. These numbers do not include trade permits.

2023	Total Permits	Avg Turnaround/days	
	January	77	2.6
	February	87	2.8
	March	94	2.6

- Nags Head Dog Park – The six new benches that Public Services staff built and installed are being utilized and enjoyed by users of the park. The crushed granite surfacing at the entry areas of the park will be installed in late May or early June 2023. Staff will inform the public and dog park users of any closures associated with the installation.

'Dowdy Park Events/Farmers Market/Holiday Markets/Art & Culture – The Committee for Art & Culture met on April 12<sup>th</sup> to select the vendors for the 2023 Dowdy Park Farmers Market. In an effort to accept returning and new producers/consumables as well as returning artisans, the market will host upwards of 70 vendors this season. Event Coordinator Paige Griffin has been successful in acquiring several sponsorships for the upcoming season's events, we would like to thank Coastal Carolina Vacations & Sales, the OBX Fitness Collective, and Stan White Realty for their generosity. Lastly, the Art & Culture Committee will be participating in the 2023 Artrageous Kids Art Festival hosted by the Dare County Arts Council on Saturday, May 13<sup>th</sup>.

#### Upcoming Meetings and Other Dates

- Tuesday, May 2<sup>nd</sup> – Technical Review Committee Meeting
- Wednesday, May 3<sup>rd</sup> - Board of Commissioners Meeting
- Thursday, May 4<sup>th</sup> – CRS Users Group Meeting
- Tuesday, May 9<sup>th</sup> – Planning Department Staff Meeting
- Wednesday, May 10<sup>th</sup> – Committee for Art and Culture Meeting
- Thursday, May 11<sup>th</sup> – Board of Adjustment Meeting (no hearings scheduled)
- Saturday, May 13<sup>th</sup> – A&C Committee participate in Artrageous
- Tuesday, May 16<sup>th</sup> – Planning Board Meeting
- Wednesday, May 17<sup>th</sup> – Board of Commissioners Mid-Month Meeting

- Tuesday, May 23<sup>rd</sup> – Planning Department Staff Meeting”

Comr. Renée Cahoon asked about artwork on the Gallery Row streets; Ms. Wyatt said that the Arts and Culture Committee is currently discussing this.

Comr. Brinkley thanked Ms. Wyatt for her report and the overview of the Septic Health Advisory Committee plans.

Comr. Sanders reported that yoga at Dowdy Park started yesterday.

Mayor Cahoon questioned if vendors are to be at the Dowdy Park concerts; Ms. Wyatt said that the Arts and Culture Committee is in discussions on this.

Consideration of a Major Site Plan Review/Site Plan Amendment submitted by Quible & Associates, P.C. on behalf of The Outer Banks Hospital, Inc. for construction of additional parking at 4917 S. Croatan Highway, Nags Head

Planning Director Kelly Wyatt summarized her staff report on the major site plan review/site plan amendment for construction of additional parking at the Outer Banks Hospital (4917 S Croatan Hwy) which read in part as follows:

“GENERAL INFORMATION

Applicant: Quible & Associates, P.C. on behalf of The Outer Banks Hospital, Inc.

Application Type: Major Site Plan Review/Site Plan Amendment.

Purpose/Request: Construction of additional parking area.

Property Location: 4917 S. Croatan Highway, Nags Head.

Existing Land Use: Commercial Mixed Use (Office w/ Residential above)

Zoning Classification of Property: SPD-C, Village Hotel District.

‘Zoning Classification of Surrounding Properties: Property to the north is zoned SPD-C, Village Hotel and is developed commercially (Childcare). Property to the south is zoned SPD-C Village Hotel and SPD-C Village SF-4 and is developed commercially (Cancer Center). Property to the west, directly across US 158 is zoned SPD-C Village C-1 and is developed commercially (Outer Banks Mall). Property to the east, directly across S. Virginia Dare Trail is zoned SPD-C T-1 and is developed residentially (The Quay).

‘Flood Hazard Zone of Property: Property is located in an X Flood Zone, per the Town of Nags Head local ordinance, the property is subject to an RFPE/LES of 9 ft. however, there are no structures associated with this request.

‘Land Use Plan Map/Policies: The 2017 Comprehensive Plan Future Land Use Map classifies this property as General Commercial. This proposal is consistent with this land use classification and stated Land Use Policies.

‘SPECIFIC INFORMATION

Applicable Zoning Regulations:

Use Regulations: Section 9.36, Table of Uses and Activities for the SPD-C District lists Office, including business, financial, governmental, medical, and professional, as a Permitted Use within the



Village Hotel District. Section 4.5, Applications Reviewed by the Planning Board and Board of Commissioners, states that Board of Commissioners approval upon Planning Board review and recommendation applies to Major Site Plan requests. A Major Site Plan is any scope of work beyond what can be approved administratively as a Minor Site Plan, noted in Section 4.4 of the Unified Development Ordinance. The scope of work associated with this request requires it to be considered as a Major Site Plan review.

- Lot Coverage: Allowable lot coverage within the SPD-C Village Hotel District is as follows: Building Area shall not exceed 25%, Parking Area shall not exceed 45%, and a minimum of 30% of the lot shall be kept in undisturbed and landscaped areas. The lot coverage associated with the building area is unchanged at 18%, the lot coverage associated with the parking area is proposed to increase from 41% to 43% and still compliant, and the landscaped area would be reduced from 41% to 38% and still compliant. Proposed lot coverages remain compliant.
- Height and Architectural Design: The proposed request for expansion of the parking lot does not necessitate any revisions to these elements.
- Parking: Pursuant to Article 10, Table 10-2, Required Parking by Use, existing onsite parking is adequate for the office uses currently occurring on this site. The applicant is proposing eight (8) additional parking spaces, for a total of 70 parking spaces including four (4) ADA parking spaces.

Section 10.92.14.4 of the UDO, Surface Materials, requires a minimum of twenty (20) percent of the surface area of the parking area and drive aisles to be constructed of permeable surface material. This site was designed prior to this code requirement, however all eight (8) of the proposed new parking spaces are being constructed in a permeable surface.

- Buffering/Landscaping: The proposed parking lot expansion does not necessitate additional buffering/landscaping. The applicant has agreed to assess the existing required 20' wide landscape buffer adjacent to NC 12 and provide supplemental plant material as needed.
- Lighting: No additional lighting is being proposed as part of this request.
- Signage: No additional signage is being proposed at this time.

'Water and Sewage Disposal: This property is located within the SPD-C Village at Nags Head District and is serviced by Carolina Water. The proposed parking addition does not necessitate Carolina Water approval as no use is being changed or expanded.

'Traffic Circulation: Traffic circulation has been reviewed and approved by the Town Engineer as proposed.

'Stormwater Management: Stormwater management has been reviewed and approved by the Town Engineer as presented.

'Fire: The project will be required to comply with all applicable NC Fire Prevention Code requirements as part of building permit application review and issuance.

'Public Works: The Public Works Director has reviewed and approved the proposed site plan as presented.

**'ANALYSIS**

Staff finds that the proposal is consistent with the applicable use and development standards, as well as relevant land use policies.

**'STAFF RECOMMENDATION**

Based upon Staff's review of the proposal staff recommends approval of the Major Site Plan Review as presented.

**'PLANNING BOARD RECOMMENDATION**

At their April 18, 2023 meeting, the Planning Board voted unanimously to recommend approval of the Major Site Plan Review as presented."

**MOTION:** Mayor Pro Tem Siers made a motion to approve the Major Site Plan Review/Site Plan amendment for additional parking at the Outer Banks Hospital (4917 S Croatan Highway) as presented. The motion was seconded by Comr. Brinkley which passed unanimously.

**OLD BUSINESS/ITEMS TABLED FROM PREVIOUS MEETINGS**

From Apr 5<sup>th</sup> Board meeting: Update on the following:

- Town volleyball courts
- Red-light camera program

Town Manager Garman summarized his agenda summary sheet re: volleyball courts and red light cameras which read in part as follows:

"Town Beach Volleyball Courts: At the April 5<sup>th</sup> Board of Commissioners meeting, the Board received a request to consider adding beach volleyball courts within the town. Although several locations were suggested, staff has reviewed the feasibility of adding two courts at Satterfield Landing Park. The Town of Nags Head owns this property and leases a portion of it to Dare County for the soccer fields, parking area, and concession stand. There is an area of open space east of the soccer fields that has been identified as a potential site for the courts. This area remains under the Town's control and two courts would only take up a small portion of this space (roughly 80' x 100'). We estimate the cost to install the two courts to be \$6,000-\$8,000. Staff has discussed this with the county; they are interested in this idea but would also like the Town to consider another use; pickleball. They indicated they would be willing to construct four pickleball courts which would be the size of two tennis courts. Both amenities would fit into the available space assuming we could meet Town regulations. Staff will solicit the Board's interest in pursuing these ideas and discuss potential considerations. Attached is the original site plan when the property was developed which shows six tennis courts in this area (which were never developed). The area in red shows the space needed to accommodate the courts.

'Red Light Cameras: The Town has explored the feasibility of red light cameras twice over the past 20 years. Special legislation was adopted in 2001 which granted several North Carolina communities, including Nags Head, the authority to operate red light camera enforcement systems. Many of red light camera programs in the state have been discontinued. Attached is a memo from PD staff which summarizes these issues. While not impossible to implement, there are several significant obstacles to operating a successful red light camera program in North Carolina. PD staff will review this with the Board with participation from Town Attorney John Leidy."

Town Manager Garman stated that Dare County would like to add joint volleyball/pickleball courts adjacent to the ball field. He is asking for the Board's approval before he moves forward.

Comr. Brinkley stated that he was in favor in order to keep everything as open play without reservations.

Comr. Sanders thanked Mr. Welch for his work in moving this forward.

It was Board consensus for staff to move forward with the additional courts.

Dep Police Chief Chris Montgomery summarized the Police Dept memo re: red-light cameras which read in part as follows:

"The use of a Red Light Camera Program in the Town of Nags Head was initially explored over twenty years ago (see attached). This was after a Session Bill was introduced in 2001 which specifically named Nags Head as being one of several counties and municipalities in the state who were permitted to operate these systems. Shortly after this, a lawsuit filed against the City of High Point effectively terminated most agencies' participation in these programs by placing restrictions on the amount of funds that could be recouped by the operating entity. Additional law suits have been filed over the years challenging various aspects of these programs.

'These programs have been researched several times over the years, and the following contributors continue to be challenges to the utilization of Red Light Cameras within the Town of Nags Head:

- North Carolina Constitution – By statute, the clear proceeds from all forfeitures and fines must be turned over to the school board. Clear proceeds have been determined to be 90% of the revenue from the citations. System costs cannot be deducted from this.
- System Operation – Agencies must utilize a subscription type service through an independent contractor, or purchase and operate the systems entirely on their own.
- Civil Litigation – The only two remaining municipalities in North Carolina to feature Red Light Cameras are Wilmington (a suit was filed against the City of Wilmington in summer of 2022), and Raleigh (same law firm seeking plaintiffs to initiate a suit against the City of Raleigh).
- Support Systems and Infrastructure – Cameras may be affixed to Traffic Light Poles, which within the Town of Nags Head, are owned by North Carolina Department of Transportation, or installation of new support structures are required.
- Cost – One site equipped with four cameras has a monthly average cost of \$28,000.00 utilizing the subscription service model.

'I will be available for any questions or comments the Board may have."

Dep Chief Montgomery pointed out that the monthly costs are \$28,000 for the cameras.

Mayor Cahoon explained that he and Comr. Brinkley were asked and they did meet with Board of Education representatives concerning this issue.

It was Board consensus that there does not appear to be a way to move forward with the red-light camera program in North Carolina at this time; staff is to check with other communities to see what is being done. Mayor Pro Tem Siers asked for a longer period of time between yellow and red lights at signal intersections. Police Chief Hale stated that after speaking with NCDOT, all lights are set for the same time period. Staff is to inform Bob Muller and Ralph Buxton of today's meeting outcome.

Police Chief Hale mentioned the use of the Message Board and the periodic use of officers dedicated to the review of running red lights.

## **NEW BUSINESS**

### Committee Reports

Mayor Cahoon – The monthly Mayor luncheon meetings will soon be back on schedule.

Mayor Pro Tem Siers – Dare County Tourism Bureau – A public meeting has been scheduled to discuss long-range tourism planning on May 24, 2023 at 5:30 pm at the Ramada Inn in Kill Devil Hills.

### Consideration of amendment to Traffic Control Map re: Admiral Street

Police Chief Perry Hale summarized his memo which read in part as follows:

“The police department is requesting an amendment to the Town’s Traffic Control Map to add “No Parking / Tow Away Zone” on the north side of east Admiral Street from NC 12 through S. Memorial Ave. We have seen an increase in parking in this area from beach, business, and residential traffic over the past few months. The south side of this area is already designated “No Parking / Tow Away Zone”.

‘This amendment would make it consistent on both sides of the roadway, make it less confusing to motorists, as well as help with preventing traffic issues with the increased amount of traffic in this area.

‘I will be available at the Board meeting to respond to questions or comments.’”

**MOTION:** Comr. Renée Cahoon made a motion to adopt the ordinance amending the Traffic Control Map re: Admiral Street as presented. The motion was seconded by Comr. Brinkley which passed unanimously.

The ordinance, as adopted, is attached to and made a part of these minutes as shown in Addendum "F".

## **ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN ATTORNEY**

Attorney Leidy pointed out that only his Closed Sessions are on his agenda for today’s meeting.

## **ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN MANAGER**

### Town Manager Garman - Update on Community Survey

Town Manager Garman summarized his report which read in part as follows:

“As the Board will recall, the FY 2023 budget included \$30,000 for the town to conduct a community survey. Staff has identified a consultant/platform that we would like to use for the survey; The National Research Center at Polco ([info.polco.us](http://info.polco.us)). They offer a variety of benchmarking and custom surveys for large and small communities throughout the United States and have established platforms to host surveys and analyze results. Our goal is to develop a custom survey for Nags Head and use the responses as part of a fall strategic planning retreat. The last time the town completed a comprehensive survey of community issues was in 2006. This was conducted as part of a land use plan update (see attached). Major topics included:

- Community Attributes
- Growth & Development
- Community Facilities
- Shoreline Management/Beach Erosion
- Water Quality
- Open Space and Natural Areas
- Ocean Beach Access
- Soundside Access
- Traffic and Transportation
- Demographic information about respondents

'We don't expect that this new survey would look exactly like the survey from 2005. However, it could include many of the same categories of questions. We expect the survey to include questions about services, community preferences, customer service, and could include questions related to land use topics.

'At the upcoming meeting, staff will review the proposed scope of work and schedule for the survey, including the process to develop the questionnaire.'

The survey is to be completed by some time in September 2023. Manager Garman indicated that he would like to send it out to a geographic sample of property owners in the Town. Staff would need a couple of months before it would be ready to be mailed out.

Board members agreed to use multiple ways/every tool possible to get as complete a response as possible.

It was Board consensus that Town Manager Garman and staff proceed with the development of the questionnaire for the Community Survey.

#### Town Manager Garman - Discussion of Stan White request to vacate portion of Old Nags Head Woods Road

It was Board consensus to agree to move Mr. Stan White's item re: vacating a portion of Old Nags Head Woods Road to this point on the agenda.

Town Manager Garman summarized the agenda summary sheet which read in part as follows:

"Attached please find a letter from Stan White and Louisa Farr, owner of Lots 3 and 4 of the Ralph Buxton Subdivision, requesting that the Town permanently close the portion of Old Nags Head Woods Road that crosses their properties.

'A letter from NCDOT placing no claim to the right-of-way along this area, as well as two letters (from 2016 and 2017) from Hornthal, Riley, Ellis & Maland Attorney, Robert Hobbs, are attached.

'This item is provided for Board discussion at the May 3<sup>rd</sup> Board of Commissioners meeting.'

Town Manager Garman stated that he wanted to gauge the Board's interest before moving forward.

Board members had several questions/comments about the property such as the need to "walk it" to see if there would be any possible use of the property; What is the value of the property – will the Town miss it; the requested to review the square footage and financial impact on each party; and suggested to review the property to the north.

Manager Garman is to return with a summary/report in response to the Board's questions/comments for further discussion.

#### Town Manager Garman - Presentation of Town Manager's recommended budget

Town Manager Garman distributed the Town Manager's recommended budget to Board members and he presented a summary. Some highlights include the following:

- Proposed employee COLA of 6.5%
- Career Progression Programs
- Minimal health increase of 2%
- Increase 401K contribution for non-sworn personnel to 5%

### **BOARD OF COMMISSIONERS AGENDA**

#### Comr. Renée Cahoon – Consideration of FY 23/24 Government Education Access Channels Committee (GEACC) annual budget request

The agenda summary sheet read in part as follows:

"At the May 3<sup>rd</sup> Board of Commissioners meeting, Comr. Renée Cahoon will present the attached proposed FY 2023/2024 annual budget for the operation of the Government Education Access Channels Committee.

'Attached please find the proposed FY 2023/2024 budget worksheets."

**MOTION:** Comr. Renée Cahoon made a motion to approve the GEACC FY 23/24 funding as presented. The motion was seconded by Mayor Pro Tem Siers as presented.

Mayor Cahoon stated that he appreciates the funding that is received and what the Town has been able to do with it – the videos are very informative.

**CONTINUATION OF MOTION:** The motion passed unanimously.

#### Mayor Pro Tem Siers – Review of Town commercial parking ordinance

Mayor Pro Tem Siers questioned if the Town's commercial parking ordinance and possibly other parking ordinances should be reviewed to eliminate parking issues currently being seen in commercial locations. He questioned if employee parking at commercial businesses was not being taken into consideration; he also suggested there be no parking on NC 12.

Police Chief Hale reported on some issues he has become aware of this past week and displayed some photos identifying parking problems.

Mayor Cahoon suggested more communication with nearby businesses re: parking. As an example, the St. Andrews By The Sea Church rents out some of its parking spaces to businesses that need additional parking.

**MOTION:** Comr. Renée Cahoon made a motion to adopt an ordinance amending the Traffic Control Map based on Police Chief Perry Hale's recommendations as follows:

- No Parking – Tow Away Zone on west side of NC 12 from Dove St north to Cavalier Surf Shop (approximately 320 feet north from Dove St)
- No Parking – Tow Away Zone on west side of NC 12 from Dove St south to Danube St

The motion was seconded by Comr. Brinkley which passed unanimously.

The ordinance, as adopted, is attached to and made a part of these minutes as shown in Addendum "G".

Comr. Brinkley – Appreciated informative letter outlining work to be done in his neighborhood

Comr. Brinkley thanked Town Engineer David Ryan for the letter forwarded to neighborhoods when work was being done in the area; he appreciated the very thorough letter.

**MAYOR'S AGENDA**

Mayor Cahoon - Consideration of resolution opposing SB 317 / HB 562 re: local land use authority

Mayor Cahoon presented the resolution opposing Senate Bill 317 and House Bill 562 which reduces the authority of local government to regulate local land use uses.

If adopted, the resolution should be forwarded to legislators today. It was suggested telephone calls also take place as a follow-up.

MOTION: Comr. Renée Cahoon made a motion to adopt the resolution opposing SB 317 and HB 562 re: local land use authority as presented. The motion was seconded by Comr. Brinkley.

Comr. Renée Cahoon encouraged those listening to contact their representatives also. If the process is taken away from the Town and the State makes those decisions, the Town has no control.

Mayor Pro Tem Siers encouraged the neighborhood Homeowner's Associations to take action and update their own regulations.

CONTINUATION OF MOTION: The motion passed unanimously.

The resolution, as adopted, read in part as follows:

"WHEREAS, The Town of Nags Head Board of Commissioners opposes Senate Bill 317 / House Bill 562 and SB 374 / HB 409 which reduce the Town's ability to uphold and promote the public health, safety, and welfare of its citizens by establishing reasonable controls for various land uses, including but not limited to, workforce housing developments as defined in SB 317 / HB 562 and accessory dwelling units, consistent with the Town's Comprehensive Plan and Unified Development Ordinance, AND

'WHEREAS, Senate Bill 317 / HB 562 and SB 374 / HB 409 as written would not allow the Town to tailor locations of accessory dwelling units and workforce housing developments to areas of best-fit, or to require adequate parking, setbacks, rental term / occupancy or other requirements that would protect the fabric of existing neighborhoods and that are designed to implement town's overall land use goals as defined in the town's Comprehensive Plan or other adopted plans.

'NOW, THEREFORE, BE IT RESOLVED That the Board of Commissioners of the Town of Nags Head does hereby oppose the following provisions of SB 317 / HB 562:

1. The erosion of the authority to protect the public health safety and welfare through reasonable land use controls by reducing local authority to direct development for the good of the entire community.
2. Requiring local governments to permit workforce housing developments in any zoning district regardless of the district's intent or range of uses is contrary to North Carolina law requiring communities to adopt Comprehensive Plans to direct certain uses to most appropriate areas.
3. The exemption of subdivisions from all density and dimensional requirements, ignores health and safety aspects related to stormwater management, onsite wastewater system separation requirements, roadway access management, driveway spacing and firefighting capability. The lack of density requirements impacts the ability to plan for infrastructure needs.
4. Subdivisions are to include 20% of lots "to be conveyed for workforce housing." However, the workforce housing lots are only guaranteed for *one* year. After one year the lots may be conveyed to anyone. There is no mechanism to ensure availability of affordable housing over the long-term.
5. In addition, sixty (60) days is insufficient to review a preliminary subdivision plat.
6. There is no requirement that the lots be served by any public utility. Developers may provide "private systems." This goes against the stated vision of the Town and its Septic Health Initiative.

'NOW, THEREFORE, BE IT RESOLVED That the Board of Commissioners of the Town of Nags Head does hereby oppose the following provisions of SB 374 / HB 409:

1. Requiring that local governments allow the development of at least one accessory dwelling unit in any area zoned for residential use that allows development of single-family dwellings represents a disregard for local land-use decision making and the ability of local property owners to weigh in on what is and what is not appropriate development in their neighborhoods and communities.
2. Precluding a local government from adopting reasonable land use controls such as regulating the siting of an accessory dwelling unit, the type of occupancy of an accessory dwelling unit or the ability to impose an additional parking requirement beyond what was required for the principal dwelling negates the ability of locally elected officials to consider all interests when making land-use decisions, including those of existing homeowners and property owners.
3. The bill's rationale to help alleviate the workforce housing shortage is counterproductive as there are no provisions in the bill to disallow the accessory dwelling units from becoming short-term rentals, thus continuing to exacerbate the workforce housing shortage.

'BE IT FURTHER RESOLVED That both Senate Bill 317 / House Bill 562 and Senate Bill 374 / House Bill 409 are contrary to the growth philosophy of the Town of Nags Head. In addition, limiting the town's authority to manage growth according to its adopted plans for development would undermine the Town's unique character.

'BE IT FURTHER RESOLVED That the Town of Nags Head Board of Commissioners does hereby oppose all other bills that weaken local authority, including but not limited to the following:

- House Bill 332 / Senate Bill 275, which would impose a 21-day shot clock on local building inspections.



- House Bill 474, which would mandate that all residential and mixed-use zoning allow small housing types such as tiny homes, cottage homes, and accessory dwelling units.

'BE IT FUTHER RESOLVED That copies of this resolution be sent to our legislative delegation and to the leadership of the North Carolina General Assembly in an effort to stop all such bills limiting our land use authority from becoming law and to work together to find real ways to advance affordable workforce and other appropriate housing opportunities."

Mayor Cahoon – Legislature to reduce funding for rural areas

Mayor Cahoon reported that legislative officials are looking at law that would benefit urban areas and have a negative effect on rural areas – to include reducing allocation from the State to rural areas by half.

Comr. Renée Cahoon asked and Mayor Cahoon agreed, to write a letter to the legislators re: this issue.

**CLOSED SESSIONS**

MOTION: Mayor Cahoon made a motion to enter Closed Session to consider the following:

To consider applications received for Nags Head Lightkeeper and Nags Header awards pursuant to GS 143-318.11(a)(2); to discuss the acquisition of property located at 100 E Hollowell Street pursuant to GS 143-318.11(a)(5); and to confer with the Town Attorney re: a matter of attorney/client privilege and to preserve that privilege regarding 205 E Baltic Street pursuant to GS 143-318.11(a)(3).

The motion was seconded by Comr. Renée Cahoon which passed unanimously. The time was 12:30 p.m.

**OPEN SESSION**

The Board re-entered Open Session at 1:18 p.m. Attorney Leidy reported that the Board did take action during Closed Session but that there was nothing to report at this time.

**ADJOURNMENT**

MOTION: Comr. Brinkley made a motion to recess to 9 am on May 17<sup>th</sup> for a Budget Workshop. The motion was seconded by Comr. Sanders which passed unanimously. The time was 1:20 p.m.

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Carolyn F. Morris, Town Clerk

Date Approved:         **June 7, 2023**        

Mayor:     
Benjamin Cahoon